



December 13, 2001

Ms. Denise G. Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2001-5821

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156076.

The Richardson Police Department (the "department") received a request for information relating to department criminal cases. You inform us that the department has released to the requestor the basic, front page information regarding the cases. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's failure to comply with section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking for an attorney general decision as to whether requested information is excepted from disclosure. Section 552.301(e) provides that the governmental body must submit to this office, "not later than the 15th business day after the date of receiving the written request . . . a copy of the written request for information[.]" Gov't Code § 552.301(e)(1)(B). Section 552.302 provides as follows:

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov't Code § 552.302. In this instance, although you indicate that you have submitted to this office the request for information, the materials that you submitted do not include a copy of that request. Your statutory deadline for submitting a copy of the request for information

has expired. Thus, as the department failed to comply with section 552.301 in asking for this decision, section 552.302 requires the release of the information unless there is a compelling reason to withhold any of that information from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ).

As section 552.108 is a permissive exception to disclosure that a governmental body may waive, the department's claim under section 552.108 does not present a compelling reason sufficient to overcome the statutory presumption that the requested information must be released. *See* Open Records Decision Nos. 177 (1977), 586 (1991). Generally, however, the operation of section 552.302 can be overcome by a demonstration that certain information is confidential by statute or that it implicates the privacy interests of a third party. *See* Open Records Decision Nos. 630 at 3 (1994), 325 (1982).

For some of the submitted information, you raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. After a review of your arguments and the submitted information, we agree that a portion of the information consists of CHRI generated by TCIC and NCIC. Accordingly, we have marked the information that is excepted from required public disclosure by section 552.101 of the Government Code.

The submitted information contains social security numbers, some of which may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was*

obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number in the submitted records is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number contained in the submitted records was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See Gov't Code §§ 552.007, .352.* Therefore, prior to releasing any social security number, you should ensure that the social security number neither was obtained nor is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Regarding driver's license numbers that we have marked in the submitted information, Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Gov't Code § 552.130(a)(1). The department must withhold the marked Texas driver's license numbers in accordance with section 552.130.

Finally, we note that, pursuant to section 552.023 of the Government Code, the requestor has a special right of access to certain information that would be excepted from required disclosure to another requestor. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Portions of the submitted information relating to the requestor are subject to section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of the Social Security Act, section 552.101 in conjunction with the right to privacy, and under section 552.130. However, as these laws were intended to protect the requestor's privacy, you must release this information to the requestor.

In summary, the department may not withhold any of the requested information under section 552.108 of the Government Code, as the department waived its claims under section 552.108 in failing to comply with section 552.301. The department must withhold the CHRI that we have marked under section 552.101 in conjunction with section 411.083

of the Government Code, and the driver's license numbers we have marked under section 552.130. Some social security numbers may be confidential under section 552.101 in conjunction with federal law. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steven Bohl". The signature is fluid and cursive, with the first name "J." and last name "Bohl" clearly legible.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 156076

Enc: Submitted documents

c: Ms. Li Jiang
820 W. Royal Lane, #272
Irving, Texas 75039
(w/o enclosures)